

CARLSMITH BALL LLP
JOHN D. OSBORN
SEAN E. FRINK
Carlsmith Building, Capitol Hill
P.O. Box 5241
Saipan, MP 96950-5241
Tel No. 670.322.3455

Attorneys for Defendant
Bank of Hawaii

IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LAW OFFICE OF DOUGLAS F. CUSHNIE,
a sole proprietorship, and
DOUGLAS F. CUSHNIE, individually,

Plaintiffs,

vs.

BANK OF HAWAII, and MARY ROE and
JOHN DOE,

Defendants.

CIVIL ACTION NO. 07-0020

SEAN E. FRINK'S FED. R. CIV. P. RULE
26(c) CERTIFICATE OF GOOD FAITH
CONFERRAL IN SUPPORT OF
DEFENDANT BANK OF HAWAII'S
MOTION FOR A PROTECTIVE ORDER

Hearing: August 26, 2008
Time: 8:30 a.m.
Judge: Honorable Alex R. Munson

Sean E. Frink, being of sound mind, state the following upon personal knowledge:

1. I am a partner in the Carlsmith Ball, LLP law firm, which is counsel of record for Defendant Bank of Hawaii in this lawsuit. In such capacity I wrote to Plaintiffs, who are both represented by Douglas F. Cushnie in this matter, regarding certain discovery concerns.

2. A true and correct copy of the letter and proposed stipulation and protective that was delivered to Mr. Cushnie is attached to this Declaration as Exhibit "A."

3. Mr. Cushnie responded to my letter on July 17, 2008, refusing to agree to execute the proposed stipulation. A true and correct copy of his response is attached hereto as Exhibit "B."

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

CARLSMITH BUILDING, CAPITOL HILL

P.O. BOX 5241

SAIPAN, MP 96950-5241

TELEPHONE 670.322.3455 FAX 670.322.3368

WWW.CARLSMITH.COM

SFRINK@CARLSMITH.COM

July 9, 2008

Douglas F. Cushnie
Law Offices of Douglas F. Cushnie
P.O. Box 500949
Saipan, MP 96950

Re: **Proposed Stipulated Protective Order**

Dear Doug:

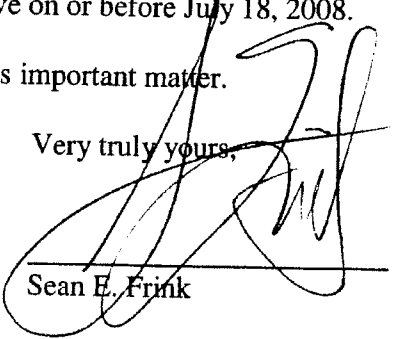
Please find attached a proposed stipulated protective order regarding restrictions imposed upon my client by 31 U.S.C. § 5318(g), 12 C.F.R. § 21.11(k), 31 C.F.R. § 103.18(e). I believe that it is self explanatory. Please understand that by proposing this stipulated request for a protective order my client does not in any way admit that documents or information precluded from disclosure exist. Instead, we have determined that seeking a protective order is the most legally sound method for dealing with situations such as this one.

We would like to get this stipulation filed with the court before the end of next week. Please understand that we intend to file a motion for a protective order if you are not willing to agree to this or a similar stipulation.

Therefore, please either sign and return the proposed stipulation or provide me with any questions or concerns you may have on or before July 18, 2008.

Thank you for your attention to this important matter.

Very truly yours,


Sean E. Frink



CARLSMITH BALL LLP
JOHN D. OSBORN
SEAN E. FRINK
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STIPULATED REQUEST FOR A
PROTECTIVE ORDER

Plaintiffs and defendant, through their attorneys of record, stipulate to the following conditions related to Suspicious Activity Reports ("SAR's") and related information in this lawsuit:

1. Defendant is prohibited by federal law (31 U.S.C. § 5318(g) of the *1992 Annunzio-Wylie Anti-Money Laundering Act*) and related regulations (12 C.F.R. § 21.11(k) and 31 C.F.R. § 103.18(e)) from producing SAR's or any information indicating that a SAR has been prepared or filed. By entering into this stipulation defendant does not admit that a SAR or SAR related information related to plaintiffs exist.

2. The prohibition includes draft SAR's, the SAR's themselves, any communication

1 concerning a SAR, and documents and communications prepared by a bank for the purpose of
 2 investigating or drafting a possible SAR. *Union Bank of California v. The Superior Court*, 130
 3 Cal.App.4th 378, 394, 29 Cal.Rptr.3d 894, 904 (Cal. App. 2005).

4 3. The statute and regulations "create an unqualified discovery and evidentiary privilege
 5 that courts have held cannot be waived." *Whitney National Bank v. Karam*, 306 F.Supp.2d 678,
 6 682 (S.D. Tex. 2004).

7 4. Defendant, therefore, shall not disclose to plaintiff in this lawsuit any information or
 8 documents concerning draft SAR's, the SAR's themselves, any communication concerning a
 9 SAR, and documents and communications prepared by a bank for the purpose of investigating or
 10 drafting a possible SAR if, in fact, any such information or documents exist.

11 5. Defendant and Plaintiffs request the Court to expeditiously enter a protective order
 12 which includes the language set forth in paragraph 4 above.

13 SO STIPULATED.

14 FOR BANK OF HAWAII

15 Dated: July ____, 2008.

16
 17
 18 SEAN E. FRINK [F0212]
 19 Attorneys for Defendant
 20 Bank of Hawaii

21
 22 FOR LAW OFFICE OF DOUGLAS F.
 23 CUSHNIE, a sole proprietorship, and
 24 DOUGLAS F. CUSHNIE, individually

25 Dated: July ____, 2008.

26 DOUGLAS F. CUSHNIE

Law Office
Douglas F. Cushnie
P.O. Box 500949
Saipan MP 96950
Telephone: (870) 234-6830/6843
Facsimile: (870) 234-9723
E mail abogados@pticom.com

July 17, 2008

VIA FACSIMILE: (670) 322-3368

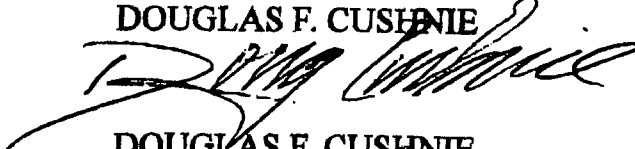
Sean E. Frink
P.O. Box 5241
Saipan MP 96950

Cushnie v. Bank of Hawaii

Dear Sean:

I shall not sign your proposed stipulation.

Very truly yours,

DOUGLAS F. CUSHNIE

DOUGLAS F. CUSHNIE

